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IN THE

Supreme Court of the United States

October Term, 1965

No. 352

J. LAURITZEN, *Petitioner*

v.

ROBERT SPANN, *Respondent*

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Respondent Robert Spann hereby responds to the petition for writ of certiorari and respectfully requests that the petition be denied.

QUESTIONS PRESENTED

The questions presented are whether a longshoreman is entitled to the warranty of seaworthiness when he is stationed ashore, using shore-based equipment to discharge cargo from a vessel, and whether that equipment, if defective, renders the vessel unseaworthy.

COUNTER-STATEMENT OF THE CASE

Respondent adopts as his counter-statement of the case that portion of the Opinion of the Court below set forth on pages 6a and 7a of the petition.

REASONS FOR DENYING THE WRIT

Breach of the warranty of seaworthiness is a maritime tort and within the maritime jurisdiction when "it is alleged that the shipowner commits a tort while or before the ship is being unloaded, and the impact of which is felt ashore at a time and place not remote from the wrongful act." *Gutierrez v. Waterman Steamship Corp.*, 373 U.S. 206, 210.

Admittedly the decision below is in conflict with the decisions of the Second and Sixth Circuits. The Third Circuit, however, is in keeping with the recent decisions in *Huff v. Mason Navigation Company*, 338 F.2d 205 (9th Cir., 1965) *cert. den.* 380 U.S. 943 (1965) and *Metzger v. SS Kirsten Torm*, 245 F. Supp. 227 (D.M.D., July 8, 1965).

These cases correctly state the law as reflected in the decisions of this Court such as *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 96 (1946), where it was stated, "That the owner seeks to have it [the work] done with the advantages of more modern division of labor does not minimize the worker's hazard and should not nullify his protection."

The obligation to provide a seaworthy vessel is not negated because the unsafe equipment creating the dangerous condition belonged to one other than the shipowner. *Alaska Steamship Company v. Peterson*, 347 U.S. 396 (1954).

That the equipment involved is not "traditionally ship's gear" does not render the doctrine of Peterson inapplicable. As this Court said in footnote 3, in *Italia Societa v. Oregon Stevedoring Co.*, 376 U.S. 315, 317 (1964), "if the owner

engages others to supply the equipment necessary to stevedoring operations, he must still answer to the longshoreman if the gear proves to be unseaworthy."

No valid distinction exists between an unsafe condition created by equipment which is shore-based and an unsafe condition created by equipment physically aboard the ship.

In *Huff v. Matson Navigation Company*, supra, the issues were virtually identical to those presented here, except that in Huff the longshoreman was aboard ship at time of injury and here the longshoreman was on the dock at time of injury. This difference is without legal significance since *Gutierrez*, supra.

CONCLUSION

For the above reasons it is respectfully submitted that the petition for writ of certiorari should be denied.

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Dated, Philadelphia, Pennsylvania
October 26, 1965.

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Petitioner submits this brief in reply to Respondent's brief in opposition, with the observation that Respondent's effort to be succinct has succeeded only in oversimplifying the issues.

Thus:

(1) Respondent's "Questions Presented" contains an unsupported assumption that the hopper was used "to discharge cargo from a vessel".

(2) The quote from *Gutierrez* v. *Waterman Steamship Corp.*, 373 U. S. 206, 210 "that the shipowner commits a tort" begs the very question in issue.

(3) The quote from *Seas Shipping Co.* v. *Sieracki*, 328 U. S. 85, 96 as to modern methods* had reference to the work of loading and unloading the vessel.

*See also Petition p. 13.

(4) It is said that the case of *Huff* v. *Matson Navigation Company,* 338 F. 2d 205, presents issues virtually the same as here, except in that instance "the longshoreman was aboard ship",—hardly a minor distinction. To this, Petitioner must also add that the equipment in *Huff* was (p. 212) "an unloading device" used as a substitute for ship's gear.

As pointed out in the Petition and the Brief Amicus, the decision below is unique in that (a) both the wrong and the injury occurred on the pier and (b) there is imposed on the shipowner an absolute non-delegable responsibility for equipment not adopted by the ship as in *Alaska Steamship Co.* v. *Petterson,* 347 U. S. 396 (1954), or used on the ship as in *Italia-Societa per Azione di Navigazione* v. *Oregon Stevedoring Co., Inc.,* 376 U. S. 315 (1964), or issuing from the ship as in *Gutierrez* v. *Waterman Steamship Corp.,* 373 U. S. 206 (1963).

CONCLUSION

WITH THE ISSUES SO CLEARLY DELINEATED AND THE FACTS NOT IN DISPUTE, PETITIONER PRAYS THAT THE WRIT BE GRANTED AND, UPON SAID GRANTING, THE DECISION BELOW BE REVERSED AND THE DISTRICT COURT DECISION REINSTATED.

Respectfully submitted,

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